Arbitration CAS 2008/A/1699 Nile Sports Club (Hasaheisa) Sudan v. Sudanese Football Association (Appeals High Committee) & Al-Hilal Sports Club, award of 4 September 2009

Panel: Mr Patrick Lafranchi (Switzerland), President; Mr Lucas Anderes (Switzerland); Mr Ralph Zloczower (Switzerland)

Football
Decision to re-schedule a game
Notion of decision
Exhaustion of the internal legal remedies
CAS jurisdiction in the case of a defaulting party
Standing to sue

1. **In spite of its denomination, an act is considered a decision when it has all its "typical" structural features, namely recitals, a statement of facts, a legal assessment and an operative part, and when it affects the legal situation of the addressee.**

2. **When a decision taken by a first instance body is overturned and referred back to it by the second instance body, the internal legal remedies are nevertheless exhausted if the first instance body can only implement the new decision of the second instance body and has no power or discretion to review or amend it.**

3. **In the case of a defaulting party, the arbitrators should examine their jurisdiction *ex officio*, but based only on the documents filed at this stage of the proceedings, without having to make any further inquiries *ex officio.***

4. **An appellant has standing to sue if she/he has an interest worthy of protection. However, this interest ceases to be legally protected if the appellant has changed its course of action to the detriment of the respondent. Indeed, according to the doctrine of *"venire contra factum proprium"*, where the conduct of one party has led to the legitimate expectations on the part of a second party, the first party is estopped from changing its course of action to the detriment of the second party.**

Nile Sports Club (Hasaheisa) (the "Appellant") is a football club with its registered office in Hasaheisa, Sudan. It is a member of the Sudanese Football Association, playing in the Super League, the Sudanese highest division.

The Sudanese Football Association (Appeals High Committee) (SFA, the "First Respondent") is the national football federation with its seat in Khartoum, Sudan. It is affiliated to the Fédération

Internationale de Football Association (FIFA) since 1948. The High Appeals Committee (HAC) is the highest appellate body of the SFA.

Al-Hilal Sports Club (the "Second Respondent" or, with the First Respondent, jointly referred to as the "Respondents") is a football club with its registered office in Omdurman, Sudan. It is a member of the SFA, also playing in the Super League.

On 2 February 2008, a Super League game was scheduled to take place at Hasaheisa Stadium between the Appellant and the Second Respondent. The latter did not show up to the game.

According to the "Sudan Football Association Statutes 2004" (the "SFA Statutes"), amended in 2007, it would have been for a SFA body named the "Organizing Committee" to solve the dispute. Indeed, Article 63.1 of the SFA Statutes states that the Organizing Committee shall have the competence to *"draw up the programmes and regulations for organizing the national competitions and any other competitions approved by the Board of Administration, and decide on the protests about these competitions and sanctions within the Byelaws"*. However, before the Organizing Committee (also referred to by the Appellant as the "Competition Organizing Committee" due to its abovementioned competence) could decide on the matter, the Second Respondent declared that it would withdraw from the Super League competition.

At this point, the Minister of Culture, Youth and Sports intervened and ordered by Ministerial Decision No 8/2008 dated 25 February 2008, that the game be re-scheduled. The Minister acknowledged that the Second Respondent had been prevented from taking part in the game due to the fact that the players' passports of the Second Respondent's team had been retained by SFA as a result of a controversy over the naturalization of two players.

Ministerial Decision No 8/2008 also ordered SFA (i) to deliver to the Second Respondent the passports of their players within twelve hours from the signature of the decision, (ii) to solve the problem of the naturalization of the Second Respondent's two players *"within the nearest possible time"*, and (iii) to compel the Second Respondent not to field those two players in any game until the naturalization problem was solved.

It appears from the file that SFA complied with the injunctions of Ministerial Decision No 8/2008 except for the order of re-scheduling the game, which was passed to the Organizing Committee.

On 29 July 2008, the Organizing Committee issued a decision by which the Appellant was declared the winner of the game by 2-0. Instead of reproducing the relevant order of Ministerial Decision No 8/2008, it decided to adjudicate the matter on the basis of the reports produced by the Referees and the Supervisor present to the game. The Second Respondent did not appeal against the decision.

By Ministerial Decision No 44/2008 of 31 July 2008, the Minister of Culture, Youth and Sports overruled the decision of the Organizing Committee and took the following sanctions: (i) ban the SFA President from travelling abroad for one year, (ii) deprive SFA from financial support for three months, and (iii) cancel the Super League competition for the 2008 season.

SFA filed an appeal against Ministerial Decision No 44/2008 before an "administrative court". The latter granted the stay of the Decision with specific regard to the cancellation of the Super League competition until it reached a decision on the merits of the case.

By letter of 5 August 2008, FIFA requested from SFA the immediate withdrawal of the ministerial decisions No 8/2008 and No 44/2008 within five days. Upon request of SFA, FIFA agreed to extend the time limit until 25 August 2008 in order to *"give to [the Ministry of Culture, Youth and Sports and the SFA] enough time to solve all the issues created by the ministerial decisions No 8/2008 and 44/2008"*.

On 6 August 2008, the Legal Department of the Ministry of Culture, Youth and Sports, on behalf of the latter, requested the First Respondent to review the decision of 29 July 2008 by the Organizing Committee. In its view, the latter decision had *"damaged sports activities and led to complications in relations between the non-governmental and official institutions involved in sports"*. It further submitted that SFA had not challenged Ministerial Decision No 8/2008 when it was issued, as a result it had become final and binding.

On 8 August 2008, the Second Respondent informed SFA that it had decided to withdraw from the second round of the Super League competition unless the game of 2 February 2008 against the Appellant was re-scheduled in implementation of Ministerial Decision No 8/2008.

Sometime between 8 August 2008 and 6 September 2008, eleven out of the twelve clubs constituting the Sudanese Super League – that is all the clubs but the Second Respondent – filed a petition with the First Respondent, requesting it to review the decision of the Organizing Committee for the following reasons: (i) it had *"pushed the Country into a crises* (sic) *which might lead to a lot of damages to the Clubs and the National Teams at different levels"* and (ii) by submitting this request, the college of the Super League clubs was *"putting the interest of [its] clubs and the high public interest of the whole Country over every other consideration"*.

On 6 September 2008, the Second Respondent appealed to HAC in the following (translated) terms: *"Although we are still insisting that the Ministerial Decision No. 8/2008 is binding, yet we assure our right for re-scheduling the said match due the* (sic) *well known circumstances which jeopardised our participation in the match, putting away any sensitivity about the technical decision or any thing* (sic) *else. We also claim our right of fielding our Naturalized players, Darucan and Soly Shereef, a case which we took to the Constitutional Court"*.

The same day, the First Respondent reached the following conclusions in its Decision No 7/2008 (the "Decision"): (a) re-scheduling of the game between the Appellant and the Second Respondent, and (b) referral of the case to the Organizing Committee as the competent body for implementation of the decision.

The First Respondent held that the solution to the case lay in the answer to the following single question: was the injunction to re-schedule the game contained in Ministerial Decision No 8/2008 binding for the SFA or not? Looking into the "Youth and Sports Institutions Act 2003", HAC found that decisions regarding the organisation of a competition – and therefore the decision about the scheduling of a game – were to be considered as "technical decisions" (Article 3) for which the national sports association – *in casu* SFA – was competent (Article 12 para. 4). As regards the Ministry

of Culture, Youth and Sports, it had a general power of supervision on all youth and sports institutions and their decisions with the exception of the technical decisions (Article 7 para. 1 lit. a). Besides, under the heading "Protection of technical decisions", Article 25 provided that the technical decisions issued by the youth and sports institutions were final and binding. Referring to the case law of the Sudanese High Court according to which a decision issued by an incompetent body "does not exist", HAC found that Ministerial Decision No 8/2008 was null and void and affirmed the competence of SFA and its bodies to solve the case.

The First Respondent then found that SFA was correct in referring the case back to the Organizing Committee as the competent body for decision. It also held that, as the Appellant had not been included as a party in the consultations between the Ministry of Culture, Youth and Sports, the High Council for Youth and Sports of the Khartoum State, the SFA and the Second Respondent having lead to the solution – the re-scheduling of the game – contained in Ministerial Decision No 8/2008, the Organizing Committee was correct in basing its own solution only on the reports produced by the Referees and the Supervisor present to the game, without giving any consideration to the solution of the Ministry. However, after having considered the content of the letter of 6 September 2008 to HAC by the Second Respondent as well as the petition for reconsideration filed by the eleven clubs of the Sudanese Super League, it quashed the decision of the Organizing Committee and ordered that the game between the Appellant and the Second Respondent be re-scheduled.

On 29 October 2008, the Appellant filed a statement of appeal dated 15 October 2008 against the Decision with the Court of Arbitration for Sport (CAS). It submitted the following request for relief: *"to dismiss the decision of the High Committee of Appeals and declare it a nullity and uphold the decision of the Organizing Committee which ruled that (a) the Second Respondent is deemed defeated by 2/0 (b) the Second Respondent shall pay SDG 3000 as a fine"*.

On 6 December 2008, the First Respondent submitted its answer to the statement of appeal.

The same day, as it was unclear from the statement of appeal when the time limit for the appeal would expire, the CAS Court Office requested the Appellant to inform the CAS of its position in relation to the appeal brief within three days of receipt of the letter.

On 18 December 2008, Counsel for the Appellant stated that he wished the statement of appeal to be considered as the appeal brief. With regard to the time limit for the appeal he stated the following: *"if you mean the date according to the Sudanese regulations then it is 15 days from the date of receiving the decision the subject matter of the appeal and since we received the decision on 15.10.2008 then the expiry date is 30.10.2008. The date of dispatch of our appeal is 29.10.2008 and accordingly we lodged the appeal within the prescribed time"*.

By letter of 30 December 2008, the CAS Court Office noted that the Appellant was making its request to consider the statement of appeal as a combined statement of appeal and appeal brief outside the time limit of 10 days following the expiry of the time limit for the appeal and reserved any final decision on this matter by the Panel.

On 12 January 2009, the CAS Court Office acknowledged receipt of the original copies of the First Respondent's answer dated 4 December 2008. It informed the Parties of the provisions of Article 56

of the Code of Sports-related Arbitration (the "Code") and also invited them to specify whether they preferred a hearing to be held in the matter or an award to be issued solely on the basis of the written submissions.

By letters dated 15 January 2009 and 21 January 2009, the First Respondent and the Appellant respectively, expressed their preference for the Panel to issue an award solely on the basis of the written submissions without a hearing. The Second Respondent did not react to the invitation of the CAS Court Office.

By letter of 27 February 2009, the First Respondent was requested to inform the Panel when the alleged re-match between the Appellant and the Second Respondent had taken place and why the result of said match did not have any influence on the final ranking of both teams.

On 1 March 2009, the First Respondent stated that the re-match had taken place on 22 September 2008 with a result of 2-0 in favour of the Second Respondent. With regard to the influence of the re-match on the final ranking of both teams, the First Respondent explained that it had neither positive nor negative effect on any of the teams since the Second Respondent finished second, 22 points ahead of the team ranked third, whereas the Appellant finished fifth and would have tied with the team ranked fourth had it won the re-match; in any case, as only the first three teams are qualified to represent Sudan in African continental and Arab regional competitions, the Appellant would not have been able to qualify.

By letter of 12 March 2009, the Parties were requested to inform the Panel whether the re-match was played under protest or not and, if need be, to send all relevant documents along with their submissions.

On 17 March 2009, the First Respondent stated that neither the match Commissioner, nor the SFA General Secretary, nor the First Respondent's Secretariat had received any indication that the Appellant was playing the re-match under protest. The match Commissioner confirmed to the First Respondent that a protest had not even been orally mentioned during the pre-match meeting between the two teams and the match officials.

On 24 March 2009, the Appellant stated that the re-match had been played under protest and that the relevant document was in the hands of the First Respondent.

By Procedural Order of 26 June 2009, the Panel informed the Parties that, pursuant to Article R57 of the Code, it had deemed itself to be sufficiently well informed and had decided not to hold a hearing in this matter.

LAW

CAS Jurisdiction

1. The competence of the CAS to act as an appeals body is based on Article R47 of the Code which provides that:

   "A party may appeal from the decision of a federation, association or sports body, insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports body".

2. According to this provision, the CAS has the power to adjudicate appeals against a sports organization only if three conditions are met (see TAS 2009/A/1869, para. 57; CAS 2008/A/1583 & CAS 2008/A/1584, para. 5.1):

   - There must be a decision of a federation, association or another sports-related body;
   - The (internal) legal remedies available must have been exhausted prior to appealing to the CAS;
   - The parties must have agreed to the competence of the CAS.

A. The existence of a decision

3. As CAS case law has constantly held (see TAS 2009/A/1869, para. 59; CAS 2004/A/659, para. 36), according to the definition of the Swiss Federal Tribunal, *"the decision is an act of individual sovereignty addressed to an individual, by which a relation of concrete administrative law, forming or stating a legal situation, is resolved in an obligatory and constraining manner. The effects must be directly binding both with respect to the authority as to the party who receives the decision"* (ATF 101 Ia 73, JdT 1977 I 67). A decision is thus a unilateral act, sent to one or more determined recipients and intended to produce legal effects (BOVAY B., Procédure administrative, Berne 2000, p. 253 f.).

4. In the instant case, it is not disputed that the First Respondent made a decision for the purposes of Article R47 of the Code on 6 September 2008. Although one of the available translations qualifies this act as a "resolution" and translations provided by the Appellant and the First Respondent are not consistent as regards titles, the act of the First Respondent has all the "typical" structural features of a decision, namely recitals, a statement of facts, a legal assessment and an operative part. Moreover, both translations concur to introduce the operative part with the words *"the following decision"*. Materially also, the act of the First Respondent is a decision since it has affected the legal situation of both the Appellant and the Second Respondent by compelling them to play the re-scheduled match.

B. The exhaustion of the (internal) legal remedies

5. Article R47 of the Code requires that there is no further internal legal remedy available against the decision in question, in other words that the internal legal remedies against the decision are exhausted. The Appellant relies on Article 52 para. 1 of the SFA Statutes to refer the case to CAS.

6. According to this provision,

"The decisions of the Appeals Committee are final, it is irrevocable with respect to matches' results, teams ranking (sic)" [Translation of the SFA Statutes provided by the First Respondent].

"The decisions taken by the High Committee of Appeal (sic) shall be final and incontestable including its decisions on the results of matches and the resulting promotion, relegation and standings of teams" [Translation of the SFA Statutes provided by the Appellant].

If the quality of the first translation renders quite difficult to understand the substance of the provision, it clearly appears from the second translation that the decisions of HAC regarding the results of matches and the ensuing standings of the teams are final and binding.

7. Nevertheless, in point (b) of its Decision, HAC referred the case back to the Organizing Committee. At first glance, it could therefore appear that the internal legal recourse have not been exhausted since the matter was referred to an organ of SFA. However, the Panels finds that the matter was only referred to the Organizing Committee with the purpose of implementing point (a) of the Decision which was to replay the game and was final and binding in the sense that the Organizing Committee had no power or discretion to review or amend the Decision.

8. For the abovementioned reasons, the Panel finds that the Decision of the First Respondent was final and that the internal legal remedies had been exhausted before the Appellant brought the matter before the CAS.

C. The consent to arbitrate

9. Article R47 of the Code stipulates various possibilities of how the parties can agree to arbitration proceedings before the CAS. Firstly, this can happen by the SFA Statutes and Regulations – to which the parties have submitted – containing an arbitration clause. Secondly, the parties can also conclude a specific arbitration agreement.

10. In its letter of 13 November 2008 the Appellant stated that in the present case, the consent to arbitrate ensued from Articles 184 lit. b, 226 and 227 of the SFA Statutes. The First Respondent did not contest the jurisdiction of CAS, while the Second Respondent did not submit any statement.

11. According to the translation of the SFA Statutes provided by the Appellant, Article 184 lit. b provides as follows:

"Sudan Football Association, any of its agencies and member clubs shall recognize their obligation to implement any ruling issued by the International Sports Arbitration Court based in Lausanne (Switzerland) in accordance with the provisions of the statute of the International Football Federation (FIFA)".

Article 226 provides the following:

"Sudan Football Association, its agencies, its member clubs, its members, players, administrators, player agents and match organization agents shall comply with any final decision issued by the agencies of the International Football Association or by the International Arbitration Court in Lausanne in Switzerland and shall be obliged to implement the decisions".

Article 227 states:

"The International Sports Arbitration Court in Lausanne can look into any appeal against a final and binding decision issued by the International Football Federation save appeals against decisions regarding violations of play law (sic) and decisions of suspension for four matches or for up to three months".

12. According to the translation of the SFA Statutes provided by the First Respondent, Article 184 is located in the chapter "Final Provisions" and deals with the residual competence of the SFA Board of Administration. It has therefore nothing to do with the present case. However, after careful reviewing, it seems that the matching article is Article 173 lit. b which provides as follows:

"Sudan FA, its organs and its affiliates are fully committed to respect and fully comply with the decisions taken by CAS (Court of Arbitration for Sport) based in Lausanne (Switzerland) according to FIFA Statutes".

Article 225 seems to be the matching provision of Article 226 and provides the following:

"Sudan FA and its members, players, officials and match and players' agents with any final decision passed by a FIFA body of CAS (sic)".

Article 226 seems to be the matching provision of Article 227 and states:

"Any appeal against a final and biding (sic) FIFA decision shall be heard by the Court of Arbitration for Sport (CAS) in Lausanne, Switzerland. CAS shall not, however, hear appeals on violations of the Laws of the Game, suspension of up to four matches or up to three months".

13. Both Article 184 [173 in the translation provided by the First Respondent] and 226 [225] of the SFA Statues deal with the binding nature of CAS awards and decisions. In no way are they related to CAS jurisdiction. With regard to the latter, the only relevant provision is Article 227 [226] of the SFA Statutes. However, whatever the translation examined, it appears that CAS has jurisdiction only when an appeal is filed against a decision of FIFA. In the present case, the decision does not emanate from FIFA, but from HAC. For this reason, the Panel finds that it has no jurisdiction to entertain the instant case on the basis of the abovementioned provisions.

14. However, as mentioned above (see para. 9), if the statutes and regulations to which the parties have submitted do not contain an arbitration clause, the parties can also conclude a specific

arbitration agreement. It remains to be seen if it was the case with regard to the Second Respondent (a) and/or the First Respondent (b).

a) With regard to the Second Respondent

15. It is admitted by Swiss jurisprudence and scholars that in the case of a defaulting party, the arbitrators should examine their jurisdiction *ex officio*, but based only on the documents filed at this stage of the proceedings, without having to make any further inquiries *ex officio* (ATF 120 II 155 c. 3b, ASA Bul. 1994, p. 404 [410]; POUDRET/BESSON, Comparative Law of International Arbitration, 2nd ed., London/Zurich 2007, para. 472; LALIVE/POUDRET/ REYMOND, Le droit de l'arbitrage interne et international en Suisse, Lausanne 1989, ad art. 186 LDIP, para. 12, MÜLLER Ch., International Arbitration, Zurich et al. 2004, ad art. 186 LDIP, para. 1.4.2). It is therefore up to this Panel to decide on its competence with regard to the Second Respondent.

16. It appears from the file that the Second Respondent did not participate in these proceedings in any way. Neither has it filed any submissions or documents, nor did it pay its share of the advance of costs. Moreover, it has not signed the Procedural Order according to which *"[t]he jurisdiction of the CAS is confirmed by the signature of the present Order by the parties"* (Article 1). The Panel therefore finds that the Second Respondent is in default.

17. Since the Second Respondent has neither concluded a specific agreement nor proceeded before this Panel, and since no provision in the SFA Statutes and Regulations can validly tie the Second Respondent, the Panel finds that it has no jurisdiction towards the Second Respondent in the present case.

b) With regard to the First Respondent

18. The Panel points out that, contrary to the Second Respondent, the First Respondent has proceeded on the merits without raising any defence of lack of jurisdiction. Moreover, it has duly signed the Procedural Order expressly conferring jurisdiction to CAS on 28 June 2009. The Panel therefore finds that the First Respondent has concluded a specific arbitration agreement in the sense of Article R47 of the Code.

19. It follows that the CAS has jurisdiction to decide on the present dispute as regards the First Respondent only.

20. Under Article R57 of the Code, the Panel has the full power to review the facts and the law.

Applicable law

21. Article R58 of the Code provides the following:

"The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

22. The SFA Statutes do not provide any provision with regard to the law applicable to the merits of this case. In its submissions, the Appellant has referred exclusively to SFA's regulations, while the First Respondent has referred to the same as well as to the "Youth and Sports Institutions Act 2003".

23. The Panel is therefore of the opinion that the parties have not agreed on the application of any specific national law. In its submissions, the Appellant has indeed referred exclusively to SFA's regulations. As a result, subject to the primacy of applicable SFA's regulations, Sudanese Law shall apply complementarily, as it is the law of the country of all the Parties.

Admissibility

24. According to Article 49 of the Code, *"[i]n the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. (…)".*

25. In his letter of 18 December 2008, Counsel for the Appellant stated that the time limit for an appeal according to the SFA regulations was *"15 days from the date of receiving the decision the subject matter of the appeal"*. However, he did not substantiate his affirmation with any reference to a provision of the SFA Statutes or Regulations and despite careful review of the regulations sent by the Parties, the Panel has been unable to find any provision dealing with the time limit to lodge an appeal before the CAS.

26. The Appellant then went on to affirm that *"since we received the decision on 15.10.2008 then the expiry date is 30.10.2008. The date of dispatch of our appeal is 29.10.2008 and accordingly we lodged the appeal within the prescribed time"*. At this time, the First Respondent did not raise any objection with regard to this statement. Moreover, by signing the Procedural Order on 28 June 2009 without any reservation, it has concluded a specific arbitration agreement and has expressed its will to proceed on the merits of the case. The Panel is therefore of the opinion that the appeal has been lodged within the prescribed time limit.

27. As the appeal complies with all other requirements of article R48 of the Code, it follows that it is admissible.

Other Procedural Matters

A. Combined statement of appeal and appeal brief

28. The Panel notes that on 19 November 2008, in accordance with Article R51 of the Code, the Appellant was required to file an appeal brief with the CAS within 10 days following the expiry of the time limit for the appeal or, in case the Appellant wished the statement of appeal to be accepted as a combined statement of appeal and appeal brief, to inform the CAS Court Office as such, within the deadline for the filing of an appeal brief. On 6 December 2008, as it was unclear from the statement of appeal when the time limit for the appeal would expire, the CAS Court Office requested the Appellant to inform the CAS of its position within three days of receipt of the letter.

29. The Appellant only answered on 18 December 2008 that it wished the statement of appeal to be considered as the appeal brief. Therefore, it must be considered to have replied outside the granted time limit. However, the First Respondent did not object to this procedural defect and signed the arbitration agreement more than six months after. In addition, it must be underlined that the Appellant has not filed an appeal brief outside the time limit but rather stated that it did not wish to file one. Therefore, the Panel decides to accept the request of the Appellant to consider its statement of appeal as a combined statement of appeal and appeal brief.

B. Appeal and answer complete

30. According to Article R56 of the Code:

"Unless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement their argument, nor to produce new exhibits, nor to specify further evidence on which they intend to rely after the submission of the grounds for the appeal and of the answer".

31. The CAS Court Office has reminded the Parties of the contents of Article R56 of the Code on 12 January 2009 while acknowledging receipt of the First Respondent's answer. As the Parties did not agree to supplement their argument and as no exceptional circumstances commended to decide otherwise, the Panel deems the submissions to have been closed after the filing of the First Respondent's answer. As a result, the *"additional arguments"* (which in any case were already included in the statement of appeal) contained in the Appellant's letter of 21 January 2009 shall not be considered. In the same way, the Appellant's comments filed on 8 March 2009 in relation to the answer of the First Respondent to the Panel's letter of 27 February 2009 will not be taken into consideration by the Panel either.

Merits

32. The Appellant's standing to sue in the present case is disputed by the First Respondent. In this connection the First Respondent refers to the *"long standing principle «He who comes for equity must come with clean hands»"*.

33. It is a general principle of law acknowledged by CAS jurisprudence that an appellant has standing to sue if she/he has an interest worthy of protection (CAS 2002/O/372, para. 73). However, this interest ceases to be legally protected if the appellant has changed its course of action to the detriment of the respondent. Indeed, according to the doctrine of *"venire contra factum proprium"*, where the conduct of one party has led to the legitimate expectations on the part of a second party, the first party is estopped from changing its course of action to the detriment of the second party (CAS 2006/A/1189, para. 8.4; CAS 2006/A/1086, para. 8.21; CAS 98/200, para. 91).

34. In the present case, the Appellant argues that contrary to the decision of the First Respondent, the decision of the Organizing Committee was *"a good and sound application of the laws and regulations and should be upheld"*. However, before contending that the decision of the First Respondent was wrong and lodging an appeal against it, the Appellant signed the petition requesting the First Respondent to review the decision of the Organizing Committee. The Panel finds it somewhat surprising that the Appellant signed the petition. However, the Appellant has raised no argument or provided any explanation in this regard.

35. Moreover, once the First Respondent had taken the decision to re-schedule the game, the Appellant accepted to replay it without filing any protest before the game or even playing the game under protest. When asked by the Panel whether the re-match had been played under protest or not, the Appellant merely stated that it was the case and that the relevant document was in the hands of the First Respondent.

36. As a panel correctly pointed out in a previous CAS case, *"in CAS arbitration any party wishing to prevail on a disputed issue must discharge its 'burden of proof', i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue. […] In other terms, […] if a party wishes to establish some facts and persuade the arbitrators, it must actively substantiate its allegations with convincing evidence"* (CAS 2003/O/506, para. 54). In the case at hand, it was therefore for the Appellant to produce convincing evidence that the match had been played under protest, i.e. to file the relevant copy of the protest registered by the referee or by the match commissioner.

37. In the Panel's view, it seems indeed hardly understandable that the Appellant (1) only invoked the filing of a protest once asked by the Panel, and (2) did not itself keep a copy of such an important document for its case. In the absence of the latter, the Panel can only come to the conclusion that the Appellant has not discharged its burden of proof and that this argument must be rejected.

38. In order to act coherently with its submissions, the Appellant should not have signed the petition requesting the review of the Organizing Committee's decision and should have produced convincing evidence that it had played the re-scheduled game under protest. However, this is not the course of action taken by the Appellant. The Panel therefore considers that the Appellant is estopped from challenging the Decision of the First Respondent before this Court.

39. The Appellant having no standing to sue, there is no need to further address its contentions. For the abovementioned reasons, the appeal of Nile Sports Club (Hasaheisa) must therefore be dismissed.

The Court of Arbitration for Sport rules:

1. The Court of Arbitration for Sport has no jurisdiction to hear the appeal filed by Nile Sports Club (Hasaheisa) Sudan against the Second Respondent, Al-Hilal Sports Club.

2. The Court of Arbitration for Sport has jurisdiction to hear the appeal filed by Nile Sports Club (Hasaheisa) Sudan against the First Respondent, Sudanese Football Association (Appeals High Committee).

3. The appeal of Nile Sports Club (Hasaheisa) Sudan against Decision No 7/2008 issued on 6 September 2008 by the Appeals High Committee of the Sudanese Football Association is dismissed.

4. Decision No 7/2008 issued on 6 September 2008 by the Appeals High Committee of the Sudanese Football Association is confirmed.

5. (…).

6. (…).

7. All other or further claims are dismissed.